



Senate

General Assembly

File No. 375

February Session, 2014

Substitute Senate Bill No. 194

Senate, April 7, 2014

The Committee on Insurance and Real Estate reported through SEN. CRISCO of the 17th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING RISK MANAGEMENT AND OWN RISK AND SOLVENCY ASSESSMENTS FOR DOMESTIC INSURERS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective January 1, 2015*) (a) As used in this
2 section:

3 (1) "Insurance group" means those insurers and affiliates included
4 within an insurance holding company system, as defined in section
5 38a-129 of the general statutes;

6 (2) "Insurer" includes any person or combination of persons doing
7 any kind or form of insurance business and includes a receiver of any
8 insurer when the context reasonably permits. "Insurer" does not
9 include agencies, authorities or instrumentalities of the United States,
10 its possessions and territories, the Commonwealth of Puerto Rico, the
11 District of Columbia, or a state or political subdivision of a state;

12 (3) "NAIC" means the National Association of Insurance

13 Commissioners;

14 (4) "ORSA" or "Own Risk and Solvency Assessment" means a
15 confidential internal assessment conducted by an insurer or insurance
16 group, appropriate to the nature, scale and complexity of such insurer
17 or insurance group, of the material and relevant risks associated with
18 the insurer or insurance group's current business plan and the
19 sufficiency of capital resources to support those risks;

20 (5) "ORSA Guidance Manual" means the current version of NAIC's
21 Own Risk and Solvency Assessment Guidance Manual, as amended
22 from time to time;

23 (6) "ORSA Summary Report" means a confidential high-level
24 summary of an insurer or insurance group's ORSA;

25 (7) "Person" has the same meaning as provided in section 38a-1 of
26 the general statutes.

27 (b) (1) Each domestic insurer shall establish and maintain a risk
28 management framework to assist the insurer with identifying,
29 assessing, monitoring, managing and reporting on its material and
30 relevant risks. This requirement may be satisfied if the insurance
31 group of which such insurer is a member maintains a risk management
32 framework applicable to the operations of such insurer.

33 (2) Each domestic insurer or the insurance group of which such
34 insurer is a member shall regularly conduct an ORSA consistent with a
35 process comparable to that set forth in the ORSA Guidance Manual.
36 Any change in the ORSA Guidance Manual shall be effective January
37 first following the calendar year in which such change was adopted by
38 NAIC. The ORSA shall be conducted at least annually and at any time
39 when there are significant changes to the risk profile of such insurer or
40 insurance group.

41 (c) Commencing January 1, 2015, upon request by the Insurance
42 Commissioner, and not more than once each year, a domestic insurer
43 shall submit to the commissioner an ORSA Summary Report and any

44 combination of reports that together contain the information described
45 in the ORSA Guidance Manual that is applicable to such insurer and
46 insurance group. The date of submission of such report or reports shall
47 be dependent on when such insurer or insurance group conducts its
48 internal strategic planning process. If the commissioner is the lead
49 state commissioner, as determined by the procedures in NAIC's
50 applicable financial analysis handbook, of the insurance group of
51 which such insurer is a member, such insurer shall submit to the
52 commissioner the reports required under this subsection once each
53 year regardless of whether the commissioner has requested such
54 reports. A domestic insurer may comply with this subsection by
55 providing the most recent and substantially similar reports that were
56 provided by such insurer or another member of the insurance group of
57 which such insurer is a member to the insurance regulatory official of
58 another state or a foreign jurisdiction and that provide information
59 that is comparable to the information described in the ORSA Guidance
60 Manual. Any such report in a language other than English shall be
61 accompanied by a translation of that report into the English language.

62 (d) Each domestic insurer or the insurance group of which such
63 insurer is a member shall prepare an ORSA Summary Report
64 consistent with the standards set forth in the ORSA Guidance Manual.
65 Such insurer or insurance group shall maintain documentation and
66 supporting information of an ORSA and shall make such
67 documentation and information available for examination upon
68 request by the commissioner. The commissioner or the commissioner's
69 designee shall review the ORSA Summary Report and such
70 documentation or information using procedures similar to those
71 currently used in the analysis and examination of multistate or global
72 insurers and insurance groups.

73 (e) The ORSA Summary Report shall include the signature of the
74 domestic insurer's or insurance group's chief risk officer or other
75 executive having responsibility for the oversight of the insurer's
76 enterprise risk management process, attesting that, to the best of such
77 officer's or executive's belief and knowledge, the insurer applied the

78 enterprise risk management process described in the ORSA Summary
79 Report and that a copy of the report has been provided to the insurer's
80 board of directors or appropriate committee thereof.

81 (f) The commissioner, after notice and hearing, may impose a civil
82 penalty on a domestic insurer that fails, without just cause, to timely
83 file an ORSA Summary Report, of one thousand dollars for each day
84 the failure to file a report continues. The commissioner may reduce the
85 penalty if the insurer demonstrates to the commissioner that the
86 imposition of the penalty would constitute a financial hardship to the
87 insurer.

88 (g) (1) A domestic insurer shall be exempt from the requirements of
89 subsections (b) to (e), inclusive, of this section if (A) such insurer has
90 annual direct written and unaffiliated assumed premiums, including
91 international direct and assumed premiums but excluding premiums
92 reinsured with the Federal Crop Insurance Corporation and the
93 National Flood Insurance Program, of less than five hundred million
94 dollars, and (B) the insurance group of which such insurer is a member
95 has annual direct written and unaffiliated assumed premiums,
96 including international direct and assumed premiums but excluding
97 premiums reinsured with the Federal Crop Insurance Corporation and
98 the National Flood Insurance Program of less than one billion dollars.

99 (2) If an insurer qualifies for an exemption pursuant to
100 subparagraph (A) of subdivision (1) of this subsection but the
101 insurance group of which such insurer is a member does not qualify
102 for an exemption pursuant to subparagraph (B) of subdivision (1) of
103 this subsection, the ORSA Summary Report shall include every insurer
104 within such insurance group. This requirement may be satisfied by the
105 submission of more than one ORSA Summary Report for any
106 combination of insurers, provided such combination of reports
107 includes every insurer within such insurance group.

108 (3) If an insurer does not qualify for an exemption pursuant to
109 subparagraph (A) of subdivision (1) of this subsection but the
110 insurance group of which such insurer is a member qualifies for an

111 exemption pursuant to subparagraph (B) of subdivision (1) of this
112 subsection, the only ORSA Summary Report required shall be the
113 report applicable to such insurer.

114 (4) An insurer that does not qualify for an exemption pursuant to
115 subparagraph (A) of subdivision (1) of this subsection may apply to
116 the commissioner for a waiver from the requirements of subsections
117 (b) to (e), inclusive, of this section, based on unique circumstances. In
118 deciding whether to grant the insurer's request for a waiver, the
119 commissioner may consider the type and volume of business written,
120 ownership and organizational structure of the insurer and any other
121 factors the commissioner considers relevant to the insurer or insurance
122 group of which such insurer is a member. If the insurer is part of an
123 insurance group with insurers domiciled in more than one state, the
124 commissioner shall coordinate with the lead state commissioner, as
125 determined by the procedures in NAIC's applicable financial analysis
126 handbook, of such insurance group and with the other insurance
127 regulatory officials of member insurers' states of domicile in
128 considering whether to grant the insurer's request for a waiver.

129 (5) If an insurer that qualifies for an exemption pursuant to
130 subdivision (1) of this subsection subsequently no longer qualifies for
131 such exemption due to changes in premiums as reflected in the
132 insurer's most recent annual statement or in the most recent annual
133 statements of the insurers within the insurance group of which such
134 insurer is a member, such insurer shall have one year following the
135 year the threshold is exceeded to comply with the requirements of
136 subsections (b) to (e), inclusive, of this section.

137 (6) Notwithstanding the exemptions in this subsection, the
138 commissioner may require that a domestic insurer comply with the
139 requirements of subsections (b) to (e), inclusive, of this section: (A)
140 Based on unique circumstances including, but not limited to, the type
141 and volume of business written, ownership and organizational
142 structure of the insurer and requests from a federal agency or the
143 insurance regulatory official of a foreign jurisdiction; or (B) if the

144 insurer (i) has risk-based capital for a company action level event, as
145 set forth in sections 38a-72-1 to 38a-72-13, inclusive, and 38a-193-1 to
146 38a-193-13, inclusive, of the regulations of Connecticut state agencies,
147 (ii) meets one or more of the standards of an insurer deemed to be in a
148 hazardous financial condition, as set forth in section 38a-8-103 of the
149 regulations of Connecticut state agencies, or (iii) otherwise exhibits
150 qualities of a troubled insurer as determined by the commissioner.

151 (h) (1) All documents, materials or other information, including the
152 ORSA Summary Report, in the possession or control of the Insurance
153 Department that are obtained by, created by or disclosed to the
154 commissioner or any other person pursuant to subsections (b) to (e),
155 inclusive, or subsection (g) of this section shall be confidential by law
156 and privileged, shall not be subject to disclosure under section 1-210 of
157 the general statutes, shall not be subject to subpoena and shall not be
158 subject to discovery or admissible in evidence in any civil action in this
159 state. The commissioner may use such documents, materials or
160 information in the furtherance of any regulatory or legal action
161 brought as a part of the commissioner's official duties. The
162 commissioner shall not otherwise make such documents, materials or
163 other information public without the prior written consent of the
164 insurer.

165 (2) Neither the commissioner nor any person who, while acting
166 under the authority of the commissioner, obtained or created
167 documents, materials or other information pursuant to subsections (b)
168 to (e), inclusive, or subsection (g) of this section, or to whom such
169 documents, materials or other information were disclosed, through
170 examination or otherwise, shall be permitted or required to testify in
171 any civil action in this state concerning any such documents, materials
172 or information.

173 (i) (1) To assist the commissioner in the performance of the
174 commissioner's regulatory duties, the commissioner:

175 (A) May share upon request documents, materials or other
176 information set forth in subdivision (1) of subsection (h) of this section,

177 including documents, materials or information deemed confidential
178 and privileged or not disclosable pursuant to said subdivision, with (i)
179 other state, federal and international regulatory officials, including
180 members of a supervisory college as described in section 38a-135 of the
181 general statutes, (ii) NAIC, and (iii) any third-party consultants
182 designated by the commissioner, provided the recipient of any such
183 documents, materials or other information agrees, in writing, to
184 maintain the confidentiality and privileged status of such documents,
185 materials or other information and has verified, in writing, the
186 recipient's legal authority to maintain confidentiality, and further
187 provided the commissioner obtains the written consent of the insurer
188 prior to sharing any such documents, materials or other information;

189 (B) May receive ORSA-related documents, materials or other
190 information, including documents, materials or information deemed
191 confidential and privileged, from regulatory officials of other states or
192 foreign jurisdictions, including members of a supervisory college as
193 described in section 38a-135 of the general statutes, and NAIC. The
194 commissioner shall maintain as confidential and privileged any
195 documents, materials or information received with notice or the
196 understanding that such documents, materials or information are
197 confidential and privileged under the laws of the jurisdiction that is
198 the source of such documents, materials or information; and

199 (C) Shall enter into a written agreement with NAIC or a third-party
200 consultant, governing the sharing and use of documents, materials and
201 information shared or received pursuant to subparagraph (A) or (B) of
202 this subdivision. Any such agreement shall (i) specify policies and
203 procedures regarding the confidentiality and security of such
204 documents, materials or other information that are shared with NAIC
205 or a third-party consultant, including (I) procedures and protocols
206 limiting sharing by NAIC to only regulatory officials of states in which
207 other member insurers of the insurance group of which a domestic
208 insurer is a member are domiciled, and (II) a provision requiring NAIC
209 or a third-party consultant to agree, in writing, and if applicable, a
210 provision requiring NAIC to obtain from a regulatory official under

211 subparagraph (C)(i)(I) of this subdivision an agreement, in writing, to
212 maintain the confidentiality and privileged status of such documents,
213 materials or other information, and verifying the recipient's legal
214 authority to maintain confidentiality; (ii) specify that the commissioner
215 shall retain ownership of such documents, materials or other
216 information and that the use of such documents, materials or other
217 information is subject to the commissioner's discretion; (iii) prohibit
218 NAIC or the third-party consultant from storing such documents,
219 materials or other information in a permanent database after the
220 underlying analysis is completed; (iv) require prompt notice to be
221 given to an insurer whose confidential information is in the possession
222 of NAIC or a third-party consultant if NAIC or the third-party
223 consultant is subject to a request or subpoena for disclosure or
224 production of such documents, materials or other information; and (v)
225 require NAIC or the third-party consultant, if NAIC or such consultant
226 is subject to disclosure of an insurer's confidential documents,
227 materials or other information that has been shared with NAIC or such
228 consultant pursuant to subparagraph (A) of this subdivision, to allow
229 such insurer to intervene in any judicial or administrative action
230 regarding such disclosure.

231 (2) No waiver of any applicable privilege or claim of confidentiality
232 in any documents, materials or other information thereof shall occur as
233 a result of disclosure to the commissioner or of sharing in accordance
234 with this subsection. Nothing in this subsection shall be construed to
235 delegate any regulatory authority of the commissioner to any person
236 or entity with which any documents, materials or other information
237 thereof have been shared.

238 (3) The ORSA Summary Report and any related documents,
239 materials or other information thereof in the possession or control of
240 NAIC or a third-party consultant pursuant to this subsection shall be
241 confidential by law and privileged, shall not be subject to disclosure
242 under section 1-210 of the general statutes, shall not be subject to
243 subpoena and shall not be subject to discovery or admissible in
244 evidence in any civil action in this state.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>January 1, 2015</i>	New section
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Statement of Legislative Commissioners:

In section 1(i)(1)(C), references to subsection (h) of this section were changed for accuracy.

INS *Joint Favorable Subst. -LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill establishes requirements for both the maintenance of risk management frameworks by insurers and the completion of an annual Own Risk and Solvency Assessment (ORSA). As the bill addresses the requirements of private insurance companies, there is no fiscal impact.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**SB 194*****AN ACT CONCERNING RISK MANAGEMENT AND OWN RISK AND SOLVENCY ASSESSMENTS FOR DOMESTIC INSURERS.*****SUMMARY:**

This bill requires each domestic (Connecticut) insurer to establish and maintain a framework to help it identify, assess, monitor, manage, and report on its material and relevant risks. This requirement may be satisfied if the insurance group of which the insurer is a member maintains a framework that applies to the insurer's operations (1(b)).

The bill requires each insurer or its insurance group to conduct an Own Risk and Solvency Assessment (ORSA) at least annually and whenever there are significant changes to its risk profile. It requires, starting January 1, 2015, Connecticut insurers to submit to the insurance commissioner an ORSA summary report containing the information described in the ORSA Guidance Manual applicable to the insurer and its group upon request. It allows him, after notice and hearing, to impose a civil penalty of \$1,000 per day on a Connecticut insurer for each day that it fails, without just cause to timely file a summary report. He may reduce this fine if the insurer demonstrates that it would be a financial hardship. The commissioner must review the summary report.

The bill exempts certain insurers from these requirements and allows others to seek a waiver from the commissioner.

Under the bill, the ORSA summary report and related material in the Insurance Department's possession or control obtained by, created by, or disclosed to, the commissioner or any other person are generally confidential and the bill restricts the use of this material.

The bill gives the commissioner various powers and duties in administering these provisions, including entering into written agreements to share information.

EFFECTIVE DATE: January 1, 2015

§ 1(a) — ORSA

Under the bill, an ORSA is a confidential internal assessment that an insurer or its insurance group conducts and that is appropriate to the (1) nature, scale, and complexity of the insurer or group; (2) material and relevant risks associated with its current business plan; and (3) sufficiency of capital resources to support those risks.

The insurer or group must conduct the assessment consistent with procedures in the ORSA Guidance Manual, which the National Association of Insurance Commissioners (NAIC) produces. Under the bill, any change in the manual becomes effective January 1 following the calendar year when NAIC adopted the change. The insurer or group must conduct the ORSA at (1) least annually and (2) any time its risk profile changes significantly.

§ 1 (c),(d),(e) — SUMMARY REPORT

Preparation. The bill requires each insurer or its group to prepare an ORSA summary report consistent with the standards in the guidance manual. They must also maintain documentation and supporting information of an ORSA and make them available for examination by the commissioner on request.

The insurer's or group's chief risk officer or other executive responsible for overseeing the insurer's enterprise risk management process must sign the report. This executive must attest, to the best of his or her belief and knowledge, that (1) the insurer applied the enterprise risk management process described in the summary report and (2) a copy of the report has been provided to the insurer's board of directors or appropriate committee of the board.

Submission to Commissioner. The insurer must file with the

commissioner the summary together with information described in the manual that apply to the insurer and its group. It must do so at the commissioner's request, which cannot be more than once each year. The submission date depends on when the insurer or group conducts its internal planning process. If Connecticut's commissioner is the lead commissioner (among a group of regulatory officials) for the insurer's group, as determined by the NAIC's financial analysis handbook, the insurer must provide the summary report once per year without being requested. (Insurance groups that operate in multiple states are subject to the jurisdiction of several regulatory officials, one of whom is designated the lead commissioner.)

A Connecticut insurer can comply with these requirements by providing the most recent and substantially similar report with information comparable to that described in the manual that it or a member of its group provided to the insurance regulatory official in another state or foreign jurisdiction. If that report is not in English, it must be accompanied by an English translation.

Commissioner's Review. The commissioner or his designee must review the summary report and the documentation or information using procedures like those he uses to analyze and examine multistate or global insurers and insurance groups.

Penalties. The commissioner, after notice and hearing, may impose a civil penalty on an insurer that fails, without just cause, to timely file a summary report. The penalty is \$1,000 for each day the failure to file continues. The commissioner may reduce the penalty if the insurer demonstrates that it would constitute a financial hardship to the insurer.

§ 1(a)(2),1(g) — INSURERS

An insurer is exempt from the bill's requirements if:

1. it has annual direct written and unaffiliated assumed premiums of less than \$500 million, including international direct and assumed premiums but excluding premiums reinsured with the

Federal Crop Insurance Corporation and the National Flood Insurance Program and

2. its group has such premiums of less than \$1 billion, subject to the same inclusions and exclusions.

If an insurer qualifies for an exemption but its group does not, the summary report must include every insurer within the group. This requirement may be satisfied by submitting more than one ORSA summary report for any combination of insurers, so long as the combination of reports includes every insurer within the group. If the insurer does not qualify, but its group does, the only summary report required of the insurers'.

If an insurer becomes ineligible for an exemption due to changes in its premium, as reflected in its most recent annual statement or those of the insurers in its group, it has one year following the year the threshold is exceeded to comply with the bill.

Notwithstanding the exemptions, the commissioner may require that an otherwise exempted insurer submit a report:

1. based on unique circumstances, such as the type and volume of business written, the insurer's ownership and organizational structure, and requests from a federal agency or the insurance regulatory official of a foreign jurisdiction or
2. if it (a) has risk-based capital for a company action level event, as described in Connecticut law, (b) meets one or more of the standards for being considered to be in a hazardous financial condition, or (c) otherwise exhibits qualities of being a troubled insurer as determined by the commissioner.

The bill does not apply to agencies, authorities, or instrumentalities of (1) the federal government, (2) a state or its political subdivisions, (3) Puerto Rico, or (4) the District of Columbia.

§ 1(g)(6) — WAIVERS

An insurer subject to the bill's reporting requirements can apply for a waiver based on unique circumstances. In deciding whether to grant a waiver, the commissioner may consider the type and volume of business written, the insurer's ownership and organizational structure, and any other factors he considers relevant to the insurer or its group. In considering whether to grant a waiver for an insurer that is part of a group with insurers domiciled in more than one state, the commissioner must coordinate with:

1. the lead state commissioner of the group, as determined by the procedures in NAIC's applicable financial analysis handbook, and
2. other insurance regulatory officials of member insurers' states of domicile.

§ 1(h) — CONFIDENTIALITY

Under the bill, the ORSA summary report and all the other documents, material, or information in the Insurance Department's possession or control obtained by, created by, or disclosed to the commissioner or any other person under the bill are:

1. confidential by law and privileged,
2. not subject to disclosure under the Freedom of Information Act,
3. not subject to subpoena or discovery, and
4. inadmissible in evidence in any civil action in Connecticut.

The same provisions apply to the ORSA summary report and other information that NAIC or the third party possesses or controls.

The commissioner may use the information he possesses or controls to further any regulatory or legal action brought as a part of his official duties. It prohibits him from otherwise making this information public without the insurer's prior written consent.

Neither the commissioner nor anyone acting under his authority who obtains or creates this information or to whom it is disclosed, through examination or otherwise, may be permitted or required to testify in any civil action in Connecticut about it.

COMMISSIONER'S POWERS AND DUTIES

§ 1 — Powers

The bill allows the commissioner to share, upon request, summary reports and other information, documents, or material in his control, including those deemed confidential and privileged or not disclosable, with:

1. other state, federal, and international regulatory officials, including members of a supervisory college (a multi-jurisdiction group of insurance officials involved in a particular case);
2. NAIC; and
3. any third-party consultants designated by the commissioner.

In each case, the recipient must agree, in writing, to maintain the confidentiality and privileged status of the information and must verify, in writing, its legal authority to maintain confidentiality. The commissioner must obtain the insurer's written consent before sharing any such information.

The commissioner may receive ORSA-related information, documents, material, or other information, including those that are confidential and privileged, from NAIC and the regulatory officials described above. The commissioner must maintain as confidential and privileged any documents, material, or information received with notice or the understanding that they are confidential and privileged under the laws of the jurisdiction that is their source.

The disclosure of the information under the bill does not waive or sharing any applicable privilege or claim of confidentiality. These provisions cannot be construed to delegate any of the commissioner's

regulatory authority to any person or entity regarding any of the information that has been shared.

§ 1 — Duties

The commissioner must enter into a written agreement with NAIC or the third-party consultant, governing the sharing and use of the above documents, material, and information. The agreement must:

1. specify procedures and protocols regarding the confidentiality and security of the information, documents, or material shared with NAIC or a third-party consultant, including procedures and protocols limiting sharing by NAIC to regulatory officials of states where other member insurers of the group of which a Connecticut insurer is a member are domiciled;
2. require NAIC or the consultant to agree, in writing, to maintain the confidentiality and privileged status of this information;
3. where applicable, require NAIC to obtain the same commitment from a regulatory official with whom this information is shared;
4. specify that the commissioner retains ownership of this information and has discretion over its use;
5. prohibit NAIC or the consultant from storing the information in a permanent database after completing the underlying analysis;
6. require that an insurer whose confidential information NAIC or the consultant possesses receive prompt notice if either entity is subject to a request or subpoena to disclose or produce such information; and
7. require NAIC or the consultant, if it is subject to disclosure of an insurer's confidential information in its possession, to allow the insurer to intervene in any judicial or administrative action regarding the disclosure.

BACKGROUND

NAIC

NAIC is the standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia, and five U.S. territories. Through NAIC, state insurance regulators establish standards and best practices, conduct peer review, and coordinate their regulatory oversight.

COMMITTEE ACTION

Insurance and Real Estate Committee

Joint Favorable

Yea 19 Nay 0 (03/20/2014)